

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
2018-102-S**

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| IN RE: |) | |
| |) | |
| Application of Kiawah River |) | KIAWAH RIVER UTILITY COMPANY'S |
| Utility Company , for Approval of |) | APPLICATION FOR APPROVAL |
| Contracts entered by it with its |) | OF CONTRACTS |
| Operator, Manager, and Parent/ |) | WITH THE UTILITY OPERATOR, |
| Developer respectively |) | THE UTILITY MANAGER, AND |
| |) | PARENT/DEVELOPER |
| |) | |
| _____ |) | |

Kiawah River Utility Company ("KRUC" or the "Applicant"), a South Carolina corporation, submits this Application for approval of three separate contracts that have been entered by it. KRUC files this Application pursuant to 26 S.C. Code Regs. R. 103-541 (Supp. 2011) and the Commission's Rules of Practice and Procedure. In support of its request, the Applicant respectfully submits the following:

1. The Applicant has applied to the Commission for approval of the service area of the Kiawah River Planned Development on Johns Island, South Carolina, and for the approval of its proposed initial rates and charges.
2. The Applicant is a utility company that will be providing wastewater services to the Kiawah River Planned Development as set forth in its initial application in this proceeding filed on June 21, 2019,
3. The Applicant seeks to be a "public utility" under the terms of S.C. Code Ann. §58-5-10(4) (Supp. 2011), and will be subject to the regulatory jurisdiction of the Commission.

4. The rates and charges proposed by the Applicant will be regulated and subject to the approval of the Commission.

THE UTILITY OPERATOR AGREEMENT

5. The Applicant is using a licensed wastewater operator to operate, repair, and maintain its wastewater facilities and do what is otherwise necessary for the wastewater treatment plant and related facilities to comply with all of the regulatory requirements of the South Carolina Department of Health and Environmental Control ("DHEC").
6. On April 14, 2019, the Applicant entered a Wastewater Treatment Plant Inspection and Maintenance Agreement with M. Agin & Associates (the "Operator Agreement"), copy attached as Exhibit 1 hereto.
7. The principal in M. Agin & Associates is Michael J. Agin who is a licensed "Level A" physical/chemical wastewater operator as reflected on the copy of his certificate from the South Carolina Labor Licensing and Regulation Board, attached as Exhibit 1-A hereto.
8. As set forth in the Operator Agreement, particularly Paragraph 1, M. Agin & Associates is responsible for the operation of the wastewater system and keeping it in compliance with all applicable regulations, among its other responsibilities.
9. Attached as Exhibit 1-B is the First Amendment to the Operator Agreement dated July 17, 2019, whereby M. Agin & Associates assumed certain responsibilities with respect to locating the wastewater lines in areas where construction or other activity may occur.

10. The Applicant submits that it is in the best interest of the public that Applicant have a licensed, experienced operator and that the terms of the Operator Agreement and the First Amendment thereto are fair and reasonable.

THE MANAGEMENT AGREEMENT

11. Because of the specialized nature of the bookkeeping and accounting as well as the regulatory oversight of the Commission, the Applicant determined that it would be best to hire an experienced professional to handle the finances and other managerial aspects of the utility that did not directly involve the physical operation of the wastewater facilities.
12. The Applicant considered three or more possible candidates to serve as the manager of the utility.
13. The Applicant selected Guastella Associates, LLC ("GA") for multiple reasons, including, but not limited to, its experience, its extensive knowledge of the accounting practices applicable to public utilities, its familiarity and experience with the regulations of the Commission and DHEC, and its experience with ORS and the Commission.
14. The Applicant extensively negotiated with GA to obtain more favorable provisions as to the fees to be paid, the length of the agreement, the insurance to be obtained by GA, and other material terms.
15. Attached as Exhibit 2 is a copy of the Management Agreement among GA, KRUC, and Kiawah River Utility Holdings, LLC, that was entered July 17, 2019.

16. As set forth in the first two pages of the Management Agreement, GA is responsible for, among other things, the accounting and bookkeeping, billing, maintaining good relationships with customers, handling customers' questions and complaints, and assuring compliance with the applicable regulations of the Commission and the applicable accounting standards.
17. KRUC was satisfied that GA could perform these services well even though GA does not have a physical office location in South Carolina. GA will prepare KRUC's financial records electronically, with hard copies printed on a periodic basis, as necessary. If requested, GA will provide copies of the books to the Office Regulatory Staff either the same day by email or the next business day if hard copies are requested. Moreover, such source documents as invoices, contracts, correspondence etc., which would not routinely be scanned into the KRUC's computer files, will also be made available as soon as possible by scanning and emailing them to ORS.
18. In the event of any investigation by the Commission or the ORS with respect to rate cases or any other matter for which the Commission or ORS requests access to the books and records, KRUC will make a full set the requested records available at Kiawah River or other location in South Carolina that is acceptable to the Commission or ORS.
19. The Applicant submits that it is in the best interest of the public that the Applicant have a manager who is extremely knowledgeable in all aspects of managing a utility and in the applicable accounting standards as well as

- the Commission's regulatory requirements and who also has experience in the actual management of small utilities like the Applicant.
20. The Applicant further submits that the terms of the Management Agreement are fair and reasonable.

MEMORANDUM OF UNDERSTANDING AMONG KRUC, ITS PARENT
AND THE DEVELOPER

21. As stated in its Application for Establishment of Service Area and Establishment of Rates and Charges, KRUC is a new wastewater utility that was created to serve a large new mixed use planned development known as Kiawah River on Johns Island, in the unincorporated portion of Charleston County.
22. Kiawah River Investment, LLC ("KRI") is the owner and developer of Kiawah River that spent in excess of \$8.5 million dollars in permitting, designing, and constructing the wastewater treatment plant and all the related facilities needed to operate the plant and serve the development of Kiawah River.
23. Because there will be an insufficient number of customers in the early years to cover the cost of operation of the Applicant at the proposed initial rates and charges and it may take many years for the revenues of the Applicant to cover all operating expenses, KRI as the developer is willing to advance through KRUC the funds necessary to cover the operating deficits that KRUC may incur. Such advances by KRI are entirely to sustain KRUC to assist it, along with future inflationary rate increases, in ultimately being capable of maintaining financial viability and attracting capital in order to

assure the provision of continuously adequate service on the strength of its own financial condition.

24. KRI, as developer, is dependent on KRUC to install, operate, and manage all the wastewater facilities in a timely and capable manner in full compliance with all the state and federal regulations, and to provide the needed capacity for the development of Kiawah River.
25. For these reasons, KRUC, KRUH, and KRI entered the attached Memorandum of Understanding (“MOU”) dated August 7, 2019, copy attached as Exhibit 3.
26. Because of a mistake in the wording of Paragraph 2 of the MOU as to the accounting treatment of the advances of KRI through KRUH, the parties to the MOU entered an Amended MOU on September 9, 2019, copy attached as Exhibit 3-A.
27. The Applicant submits that it is in the best interest of the public that Applicant have a commitment from KRI and KRUH to advance sums to cover its operating shortfalls so that KRUC is assured of financial viability.
28. The Applicant further submits that its reciprocal obligation to KRI to own, operate, and maintain a wastewater utility with adequate capacity and to provide service in a diligent and timely manner with full regulatory compliance is entirely reasonable under these circumstances and is in many respects simply a restatement of its responsibilities and obligations as a public utility regulated by the Commission and as a wastewater treatment facility regulated by DHEC.

29. The terms and conditions of the Amended MOU are fair and reasonable.

REQUEST FOR APPROVAL

30. Regulation 103-541 of the South Carolina Code of Regulations provides that a sewerage utility must seek the Commission's approval of contracts or agreements which "impact, pertain to, or effect ..." the "utility's fitness, willingness, or ability to provide sewerage service, including but not limited to the collection or treatment of said wastewater. . . ." 26 S.C. Code Regs. R. 103-541 (Supp. 2018).

31. The proposed agreements are beneficial to KRUC and positively affect its technical, managerial, and financial ability to provide sewerage service to its future customers and abide by the statutes and regulations of the Commission and DHEC governing wastewater utilities and wastewater treatment systems.

32. KRUC submits that the terms of the agreements are reasonable and fair. The terms contain safeguards for both KRUC and the contracting parties and do not impose obligations that would have a detrimental effect on KRUC's ability to operate the utility.

33. The contracts submitted by KRUC for approval by the Commission are for lawful purposes within the corporate purposes of KRUC, are reasonably necessary and appropriate for and consistent with the proper performance of its services to the Commission, DHEC, and its future customers, and will enhance rather than impair KRUC's ability to perform those services.

34. Based upon the foregoing, KRUC submits that the public convenience and necessity will be served by the Commission's approval of the agreements and it is in the best interests of the future customers of the Applicant and the public that this Commission approve the following agreements:

- a. The Operator Agreement with M. Agin & Associates and First Amendment thereto;
- b. The Management Agreement with Guastella Associates, LLC; and,
- c. The Amended Memorandum of Understanding among Kiawah River Utility Company, Kiawah River Utility Holdings, LLC, and Kiawah River Investment, LLC.

WHEREFORE, having fully set forth its Application, KRUC prays that the Commission issue its directive and order approving the above agreements at the time that Commission issues its Order on the pending Application for Establishment of Service Area and Establishment of Rates and Charges.

Respectfully submitted,

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September 19, 2019